

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT
SAN JUAN, P.R.

WANDA E. DIAZ PEREZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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CIVIL NO. 96-2614 (PG)

OPINION AND ORDER

The matter before the Court is the U.S. Magistrate Judge's report and recommendation concerning Wanda E. Diaz-Pérez' request for review of her sentence pursuant to 18 U.S.C. § 3742. (Docket No. 15). Petitioner Díaz-Pérez, filed her objections to the report and recommendation. (Docket No. 16).

(2)

The Magistrate Judge correctly ruled that the district court lacked jurisdiction to review petitioner's sentence under 18 U.S.C. § 3742. See United States v. Airman, 8 F.3d 1268 (8th Cir. 1993). Although Díaz-Pérez acknowledged in her objections to the report and recommendation that it is the First Circuit Court of Appeals the one that has jurisdiction under section 3742 to review her sentence, she claims that the procedure to request such a review is ambiguous. She mentions the certificate of appealability procedure to review a dismissal or denial of a motion under 28 U.S.C. § 2255 and moves the court to forward her motion for review of her sentence to the First Circuit.

The procedure a defendant has to use to review a sentence under § 3742 is different than the one she has to use to review a denial or

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dismissal of a § 2255 motion. Under § 2255 a defendant needs to file a notice of appeal and a motion for certificate of appealability to review a denial or dismissal of a 2255 motion. Under § 3742(d) a defendant needs only file a notice of appeal and once filed the Clerk shall certify to the Court of Appeals - (1) the portion of the record in the case that is designated as pertinent by either of the parties; (2) the presentence report; and (3) the information submitted during the sentencing proceeding. 18 U.S.C. § 3742(d).

Mindful that Díaz-Pérez is a pro se litigant the court will consider her request for review as a notice of appeal and will refer Petitioner's request for review of sentence under 18 U.S.C. § 3742 to the First Circuit Court of Appeals.¹

In view of the above, the Court orders the Clerk of the Court to refer Petitioner's Request for Review of Sentence (Docket No. 13) to the First Circuit Court of Appeals and to certify to the Court of Appeals the documents described in 18 U.S.C. § 3742(d).

IT IS SO ORDERED.

San Juan, Puerto Rico July 10, 2000.

Juan M. Perez-Gimenez
JUAN M. PEREZ-GIMENEZ
U.S. District Judge

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The Court does not rule on the merits of petitioner's claims or whether the appeal was timely filed.